

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D 13 FEB 2006

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WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:
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Date of mailing
(day/month/year)

08 FEB 2006

Applicant's or agent's file reference

COCH0153PCT

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/US05/21207

International filing date (day/month/year)

15 June 2005 (15.06.2005)

Priority date (day/month/year)

15 June 2004 (15.06.2004)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61N 1/18 and US Cl.: 607/57

Applicant

COCHLEAR AMERICAS

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Facsimile No. (571) 273-3201

Date of completion of this opinion

12 December 2005 (12.12.2005)

Authorized officer

Jeffrey R. Jastrzab

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US05/21207

Box No. I Basis of this opinion

1. With regard to the **language**, this opinion has been established on the basis of:

☒ the international application in the language in which it was filed

☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ on paper

☐ in electronic form

c. time of filing/furnishing

☐ contained in the international application as filed.

☐ filed together with the international application in electronic form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/21207

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-----------------------------|-----|
| Novelty (N) | Claims <u>1-7 and 11-15</u> | YES |
| | Claims <u>8-10</u> | NO |
| Inventive step (IS) | Claims <u>NONE</u> | YES |
| | Claims <u>1-15</u> | NO |
| Industrial applicability (IA) | Claims <u>1-15</u> | YES |
| | Claims <u>NONE</u> | NO |

2. Citations and explanations:

Claims 8-10 lack novelty under PCT Article 33(2) as being anticipated by Nygard et al. The detection of maximum gradient of the EAP and minimum artifact amounts to detection of plural features.

Claims 1-7 and 11-15 lack an inventive step under PCT Article 33(3) as being obvious over Carter et al. in view of Nygard et al. Carter discloses the invention substantially as claimed including incremental stimulation to determine the NRT threshold, however plural features are not detected in the response signal. Nygard et al. teach that the sensed EAP includes a stimulus artifact and thus seeks to find the maximum EAP along with the minimum artifact (plural features). It would have been obvious to have incorporated the Nygard et al. teachings into the Carter device in order to optimize signal detection by removing noise generated by the stimulation signal.

Claims 1-15 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.